

FOLLOWING IS A MODEL PROTECTIVE ORDER FOR SUGGESTED USE IN COMPLEX CASES ASSIGNED TO DEPARTMENTS 17 & 21. USE OF THIS MODEL IS VOLUNTARY AND THE MODEL MAY BE REVISED PER THE CIRCUMSTANCES AND NEEDS OF A PARTICULAR CASE. ALL PROTECTIVE ORDERS MUST EXPLICITLY PROVIDE FOR COMPLIANCE WITH CALIFORNIA RULES OF COURT 2.550, 2.551 AND 8.46 TO THE EXTENT APPLICABLE, AND MUST BE SUBMITTED FOR COURT APPROVAL, WHETHER OR NOT BASED ON THIS MODEL, WITH THE PROPOSED ORDER AS A SEPARATE DOCUMENT FROM THE STIPULATION.

[MODEL] PROTECTIVE ORDER RE: CONFIDENTIAL INFORMATION

[INTRO FOR STIPULATION]

[WHEREAS the parties in the action pending in the Superior Court of California, County of Alameda entitled *** v. ***, Case No. *** ("the Litigation"), anticipate that during the course of the Litigation documents and/or information of a sensitive, private and confidential nature may be produced in the course of discovery or otherwise disclosed or provided, and the parties wish to protect the confidentiality of such documents or information while ensuring that discovery may be pursued with a minimum of delay and expense,

THEREFORE the following parties, ***, ***, ***, ... (hereafter "Party or Parties") hereby stipulate and agree to the following proposed Protective Order Re: Confidential Information ("Protective Order"), subject to court approval:]

[INTRO FOR PROPOSED ORDER]

[WHEREAS the parties in the action pending in the Superior Court of California, County of Alameda entitled *** v. ***, Case No. *** ("the Litigation"), ***, ***, *** (hereafter "Party or Parties") have entered into a Stipulation for Protective Order re: Confidential Information ("Protective Order"), and good cause appearing therefore, the court HEREBY ORDERS AS FOLLOWS:]

1. SCOPE OF PROTECTIVE ORDER

(a) The protection of this Protective Order may be invoked with respect to any documents, testimony, information, and things (collectively "materials") produced or created in this action that contain Confidential Information. As used herein, the term "Confidential Information" includes testimony and records, including but not limited to discovery responses, whether hardcopy or electronic, that contain confidential and/or proprietary trade secret information, including, but not limited to, technical and competitively-sensitive information protected by law, and information protected by

California's constitution and common law right to privacy. As set forth below, materials containing Confidential Information may be designated as "Confidential." Such designation may be made by any Party or non-party producing materials in this action ("Producing Party"), or may be made by a Party who determines, in good faith, that materials produced by a non-party contain "Confidential" information ("Designating Party") even though not so designated by the Producing Party.

(b) In the event that additional Parties join or are joined in this litigation, they shall not have access to materials designated as "Confidential" pursuant to this Protective Order until they have executed and, at the request of any Party, filed with the court their agreement to be bound by this Protective Order.

2. DESIGNATION OF MATERIALS AS CONFIDENTIAL.

(a) "Confidential" materials shall include only such information as the Producing or Designating Party in good faith contends should be protected pursuant to this Protective Order on the grounds that the information is properly subject to protection under existing California or federal law.

(b) In making the designation of materials pursuant to this Protective Order, the Producing or Designating Party shall give due consideration to whether the information contained in the materials (1) has been produced, disclosed or made available to the public in the past, (2) has been published, communicated or disseminated to others not obligated to maintain the confidentiality of the information contained therein, (3) has not been preserved or maintained in a manner calculated to preserve its confidentiality, or (4) is available from a third party or commercial source that is not obligated to maintain its confidentiality or privacy. The Producing or Designating Party shall also give due consideration to the age of the materials.

(c) The protection of this Protective Order may be invoked with respect to materials in the following manner:

(i) Documents when produced or otherwise designated shall bear the clear and legible designation "Confidential" on each page of the document, except that in the case of multi-page documents bound together by staple or other permanent binding, the "Confidential" legend need only be affixed to the first page in order for the entire document to be treated as "Confidential." Documents produced prior to the entry of this Protective Order may be designated as "Confidential" within thirty (30) days after entry, and documents produced by non-parties may be designated "Confidential" by a Party within thirty (30) days after such production.

(ii) As to discovery requests or the responses thereto, the pages of such requests or responses containing "Confidential" materials shall be so marked, and the first page of the requests or responses shall bear a legend substantially stating that "This Document Contains 'Confidential' Material";

(iii) As to deposition testimony, "Confidential" treatment may be invoked by: (1) declaring the same on the record at the deposition with instructions to so designate the cover of the deposition transcript, or (2) designating specific pages as "Confidential" and serving such designations within thirty (30) days of receipt of the transcript of the deposition in which the designations are made. All deposition testimony shall be treated as "Confidential" pending receipt of a transcript of the deposition.

(d) If any Producing Party inadvertently produces or discloses any "Confidential" information without marking it with an appropriate legend, the Producing Party or a Designating Party shall promptly notify the receiving party that the information should be treated in accordance with the terms of this Protective Order, and shall forward appropriately stamped copies of the items in question. Within five (5) days of the receipt of substitute copies, the receiving party shall return the previously unmarked items and all copies thereof. The inadvertent disclosure shall not be deemed a waiver of confidentiality, and such designation shall be made as soon as possible after the discovery of the inadvertent production or disclosure.

3. CHALLENGES TO "CONFIDENTIAL" DESIGNATION.

(a) Any Party believing materials designated as "Confidential" by another is not entitled to such designation shall notify the Producing or Designating Party of that belief in writing, provide a brief statement of the basis for that belief with service on all other Parties, and allow ten (10) days for the Producing or Designating Party to respond.

(b) If a Producing or Designating Party does not modify its designation of the materials in response to a notice pursuant to paragraph 3(a) of this Protective Order, then the Party challenging the "Confidential" designation may move the court for an order modifying or removing such designation. To maintain "Confidential" status, the burden shall be on the proponent of confidentiality to show that the material or information is entitled to protection under applicable law. Unless and until a "Confidential" designation is voluntarily withdrawn by the Producing or Designating party, or the court issues an order modifying or removing such designation, the provisions of the Protective Order shall continue to apply.

4. DISCLOSURE OF MATERIALS DESIGNATED AS CONFIDENTIAL

(a) Materials designated "Confidential," as well as summaries, excerpts and extracts thereof, shall not be disclosed to or made accessible to any person except as specifically permitted by this Protective Order. Materials designated "Confidential" shall be used solely in the preparation for trial and/or trial of the Litigation, and shall not be used at any time for any other purpose.

(b) Materials designated as "Confidential" may be disclosed only to:

(i) The court, its clerks and research attorneys;

- (ii) Attorneys actively involved in the representation of a Party, their secretaries, paralegals, legal assistants, and other staff actively involved in assisting in the Litigation;
 - (iii) In-house attorneys employed by any Party and working on the Litigation, and their secretaries, paralegals, legal assistants, and other staff actively involved in assisting in the Litigation;
 - (iv) The Parties, potential or actual class members, officers and employees of the Parties assisting counsel in the preparation of the case for trial, motion practice or appellate proceedings, provided that the materials designated "Confidential" may be disclosed to such persons only to the extent such disclosure is, in the judgment of counsel, reasonably necessary to counsel's preparation of the case;
 - (v) Any expert or consultant who is retained by any of the Parties or their counsel of record to assist counsel in the Litigation, and any employee of such an expert assisting in the Litigation (hereafter, "Experts");
 - (vi) Any person called to testify as a witness either at a deposition or court proceeding in the Litigation, but only to the extent necessary for the purpose of assisting in the preparation or examination of the witness, and also only if such persons are informed of the terms of this Protective Order, provided with a copy of the Protective Order and agree, on the record, that they are bound by the terms of the Protective Order and are required not to disclose information contained in the materials designated as "Confidential";
 - (vii) Deposition and court reporters and their support personnel, for purposes of preparing transcripts;
 - (viii) Employees of outside copying services and other vendors retained by counsel to assist in the copying, imaging, handling or computerization of documents, but only to the extent necessary to provide such services in connection with the Litigation and only after being informed of the provisions of this Protective Order and agreeing to abide by its terms;
 - (ix) Mediators or other Alternative Dispute Resolution neutrals (including their employees, agents and contractors) to whom disclosure is reasonably necessary to their involvement in the Litigation; and
 - (x) Any person who created a document or was the recipient thereof.
- (c) Each person to whom "Confidential" materials are disclosed (other than persons described in paragraphs 2(b)(i), (vii), and (viii)) shall execute a non-disclosure agreement in the form attached hereto as Exhibit A prior to their receipt of the Confidential materials, and shall agree to be bound by this Protective Order and to be subject to the

jurisdiction of this court for the purposes of enforcement, except that individuals identified in paragraphs 2(b)(ii) and (iii) shall not be required to execute such an agreement, provided that counsel making disclosure to such individuals advise them of the terms of the Protective Order and they agree to be bound thereby. Counsel disclosing "Confidential" materials to persons required to execute non-disclosure agreements shall retain all such executed agreements. Copies of the executed agreements shall be preserved by counsel and shall be provided to the opposing party if the court so orders upon a showing of good cause.

5. USE IN COURT PROCEEDINGS - FILING OF COURT PAPERS.

(a) Nothing contained in this Protective Order shall be construed to prejudice any Party's right to use at trial or in any hearing before the court any Confidential Information, provided that reasonable notice of the intended use of such material shall be given to all counsel of record in order to enable the parties to arrange for appropriate safeguards, and provided that the rules applicable to sealing records, as further addressed below, are followed. Likewise, nothing in this Protective Order shall be dispositive of any issues of relevance, discoverability or admissibility.

(b) The submission of any materials designated as "Confidential" pursuant to this Protective Order to the court in the Litigation must comply with California Rules of Court ("CRC") 2.550, 2.551 and 8.46 to the extent applicable. If the materials are required to be kept confidential by law or are submitted in connection with discovery motions or proceedings, no court order is required. (CRC 2.550(a)(2) and (3).) However, if the materials are submitted for use at trial or as the basis for adjudication of matters other than discovery motions or proceedings, a court order sealing the materials is required and may only be obtained by careful compliance with the procedures set forth in CRC 2.551.

If either Party seeks to file Confidential material or disclose the contents of Confidential material designated as such by the opposing Party as a basis for adjudication other than discovery motions or proceedings (e.g., motions within the scope of CRC 3.1350 and 3.764), the filing Party must meet and confer with the designating Party at least 10 calendar days prior to the intended filing date to offer the designating Party the opportunity to evaluate whether the designated materials fall within the parameters of CRC 2.550(d), and to either (a) remove the Confidential designation, or (b) prepare a motion or application pursuant to CRC 2.551(b).

The Parties understand that failure to comply with the procedural requirements of CRC 2.551 or failure to present evidence sufficient to support the findings set forth in CRC 2.550(d) may result in the placement of confidential materials in the public file. The Parties further understand that no sealing order will be issued solely on the basis of the existence and applicability of this Protective Order. (CRC 2.551(a).)

6. MODIFICATION.

Nothing in this Protective Order shall preclude any Party from applying to the court to modify this Protective Order to provide for additional safeguards to ensure the confidentiality of materials produced in this action or otherwise modify this Protective Order for good cause shown. In the event that documents or information that warrant heightened protection as for "Attorney's Eyes Only" are requested to be produced, the Parties agree to negotiate in good faith to modify this Protective Order to provide for such protection.

7. DISPOSITION OF MATERIALS AT CONCLUSION OF CASE.

All materials designated as "Confidential" shall remain in the possession of the counsel of record of the Party to whom such materials are produced, and they shall not permit any such materials to leave their possession, except that copies of such materials may be made for the use of persons to whom disclosure may be made under paragraph 4(b) of this Protective Order, or for the purpose of submission to the court under paragraph 5 of this Protective Order. Within sixty (60) days after this action is concluded, including the expiration or exhaustion of all rights to appeal, each Party to whom "Confidential" materials were produced shall, at the election of the Party receiving the materials, (a) return all documents and copies containing "Confidential" materials (including, but not limited to, copies in the possession or control of any expert or employee) to the Producing Party, or (b) promptly destroy all such materials and copies and provide a written certification under oath to the Producing Party and to any Designating Party to that effect.

8. RETENTION OF JURISDICTION.

The court shall retain jurisdiction over all persons to be bound by the terms of this Protective Order, during the pendency of this action and for such time thereafter as is needed to carry out its terms.